

Senate Bill 34 (Burton)
Proposition 34 clean-up and other changes

Version: As amended, June 4, 2001

Status: Assembly Appropriations Comm.

Status Update

Amendments to SB 34 since the Commission last reviewed it do the following:

1. Provide that the contribution limits of Proposition 34 apply to the aggregate amount of loans and contributions. The previous version of the bill created a separate limit for loans. The Political Reform Act already includes loans in the definition of contribution.
2. Provide that moneys raised to pay off pre-2001 debt under the authority of Section 85321 may include amounts necessary to pay fundraising costs, and must be used to repay debt.
3. Modify the member communication exception to provide that payments by an organization to communicate with its members, shareholders, employees or the family members of those individuals are not contributions or *expenditures*. Proposition 34 had provided that these payments were not contributions or *independent expenditures*. The drafters intended by this change to ensure that payments for these communications are non-reportable for organizations that do not otherwise qualify as political committees. The amendment specifically provides that membership communications made by political parties are reportable prior to an election as though they were late contributions or expenditures.
4. Recast Section 83 of Proposition 34—the delayed operative language applicable to candidates for statewide elective office—in order to make it clearer and more specific. Issues still remain on the applicability of certain provisions as discussed below.

The bill passed the Assembly Elections Committee on Wednesday, June 6, 2001. Since the bill has some state costs, it will go to the Assembly Appropriations Committee next where it will likely be passed out on consent. SB 34 could be on the Assembly Floor as early as mid-June and will need to be returned to the Senate for a vote on concurrence in the amendments made by the Assembly. Based on its current progress, the bill could be to the Governor before the Legislature adjourns for summer recess on July 20, 2001.

Background

Proposition 34 was a legislative initiative measure placed on the November 2000 State Ballot by Senate Bill 1223 (Burton) of 2000. Proposition 34 repealed nearly all of the provisions of Propositions 73 and 208, and replaced them with a new contribution limit and voluntary expenditure scheme.

Senate Bill 34 is a follow-up measure to Proposition 34. Following voter approval of the proposition in early November of 2000, Commission staff identified several issues that required legislative clarification. Many of these issues were communicated to the drafters of SB 34 and are addressed in the bill.¹

In addition, the drafters have added several substantive provisions not requested by Commission staff. The first of these allows elective state office candidates with debt incurred prior to January 1, 2001, to raise contributions not subject to Proposition 34 limits to repay that debt. This authority is limited, in the aggregate, to the amount of a candidate's pre-2001 debt and, as a result of the May 17th amendments, money raised under this authority must be used to repay that debt. Another amendment requires candidates and committees primarily formed to support or oppose a state ballot measure to report, online or electronically, contributions of \$5,000 or more made more than 90-days prior to an election. Finally, the May 17th version also amended the member communication exception to render payments for that purpose neither contributions nor expenditures, independent or otherwise. Since these previous issues have been discussed at some length in previous analyses for the Commission, it is on the member communication issue that this analysis will focus.

Discussion

Member Communications Exception

According to the drafters, Section 85312 is premised on the notion that communications to members of an organization are protected by the constitutional right of association and should not be subject to state regulation unless paid for by a political committee. Proposition 34 provided that payments for member communications are not contributions or independent expenditures. Consistent with this thinking, payments for membership communications 1) will not render the organization a committee when the cost of a communication reaches \$1,000 and 2) when made in the closing weeks of an election, are not reportable as late contributions or late independent expenditures. Also, contribution and expenditure limits would not apply.

As proposed to be amended by SB 34, Section 85312 would read as follows:

For purposes of this title, payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or ~~independent~~ expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements. *However, payments made by a political party for communications to its members who are registered with that party which would otherwise qualify as contributions or expenditures shall be reported only in accordance with Article 2 (commencing with Section 84200) of Chapter 4 of this title.*

¹ The amendments in Sections 7-9, and 12-14 are technical changes requested by Commission staff.

The drafters of this amendment say it is intended to clarify that payments made for membership communications by non-committee membership organizations will not subject them to any reporting obligations under the PRA or similar local laws, unless they otherwise qualify as political committees (i.e. by giving direct contributions to candidates). It follows that Section 85312 applies to non-committee membership organizations, such as unions, the Sierra Club, etc. What remains unclear even after the amendment is whether the term "organization" refers only to "organizations not formed or existing primarily for political purposes," i.e., whether political action committees can ever qualify as membership organizations for purposes of section 85312.

For purposes of determining whether a payment is a contribution, the question is whether the payment is made for political purposes. Regulation 18215 (a)(2)(D) provides that a payment is made for political purposes if it is received by or made at the behest of:

An organization formed or existing primarily for political purposes, including but not limited to a political action committee established by any membership organization, labor union or corporation.” (Emphasis added.)

Under the Commission's current regulation, the term "organization" is in reference to organizations formed or existing primarily for political purposes. This includes political action committees established by membership organizations, labor unions, or corporations for such purposes. Organizations that are not created or exist primarily for political purposes do not fall under the purview of this regulation. With respect to Section 85312, the communications in question are those made by an organization to its members in support of or opposition to a candidate or a ballot measure. For the exception to apply as the drafters intended, the Commission may need to determine under what circumstances an organization that supports or opposes candidates falls within the exception.

This issue is one that the Commission staff plans to address in a proposed regulation. The Commission may need to define the term "organization" in Section 85312 to clarify the drafter's intent, which is consistent with constitutional right of association mentioned above. If SB 34 is enacted, the Commission may also need to decide what level of reporting a political committee making payments for member communications will have under Section 85312.

Reporting of Political Party Payments for Member Communications

The second sentence of Section 85312 was added to subject political parties that make payments for member communications to the disclosure requirements that would apply if the section were not in existence. In this way, party communications to their members in support of or opposition to a candidate or ballot measure will still be reported prior to an election as though they were late contributions or independent expenditures. This will include the amount spent for a communication and the candidate or candidates on behalf of whom the communication was made. This language affirms the principle already codified in Section 81013 that political parties, like other state committees, follow state law with respect to their reporting obligations. Whether charter cities can enact additional reporting requirements notwithstanding Section 81013 is the subject of the opinion request (Item 3) currently before the Commission.

Applicability to Statewide Candidates Clarified

Section 83 of Proposition 34 delayed, until November 6, 2002, the application to statewide candidates of the changes the initiative made to Chapter 5.² SB 34 now amends that delayed operative language to clarify that it delays only the operation of Articles 3, 4 and 6, and that the provisions requiring reporting of contributions of \$1,000 or more during an election cycle within 24 hours of making, and contributions of \$5,000 or more outside of an election cycle within 48 hours of making, apply immediately (upon enactment of the bill).

No Opposition; Substantial Support

The League of Women Voters and California Common Cause (letters attached), as well as the Democratic and Republican parties all support SB 34 in its current form. There is no recorded opposition.

Staff Recommendation

SB 34 is moving through the Legislature just as the Commission is considering some of the major interpretive and policy questions involved in implementing Proposition 34. Many of these questions relate to provisions being amended in the bill. In some instances, the Commission's action may render the legislative amendment unnecessary; in others, the change proposed in SB 34 is one of the options being considered in a regulation. **For these reasons, staff recommends that the Commission take no position on SB 34 at this time.**

² Section 83 of Proposition 34 did make one provision of Chapter 5 applicable to statewide candidates: paragraph (a) of Section 85309. This provision requires candidates to report online within 24 hours any contribution of \$1,000 or more that is made within 90 days prior to an election.

Summary of SB 34 Provisions

Bill Sec.	Code Sec.	Subject	Source
1.	84204	Independent expenditure disclosure	Drafters

The change being made here (deletion of “candidate or” to leave “committee”) is without controversy. The term “committee” is, for all purposes, inclusive of “candidate” since any independent expenditure of \$1,000 or more will render the payer a committee.

2.	84215	Reporting: where to file	Drafters
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There are no concerns over this technical change to reflect current reporting requirements for Board of Equalization candidates.

3.	85303(b)	Clarifying \$25,000 limit on contributions to parties	Drafters
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The new sentence is intended to clarify that moneys given to a political party for the purpose of communications to party members made at the behest of a candidate are subject to the \$25,000 contribution limit. The language of this amendment is inconsistent with Section 85312 which says that payments made for communications to party members are not contributions. For consistency and clarity, staff recommends the following modification to this proposed amendment:

85303 (b). A person may not make to any political party committee, and a political party committee may not accept, any contribution totaling more than twenty-five thousand dollars (\$25,000) per calendar year for the purpose of making contributions for the support or defeat of candidates for elective state office. ~~Notwithstanding section 85312, this limit applies to contributions made to a political party used~~ *or for the purpose of making expenditures at the behest of a candidate for elective state office for communications to party members related to the candidate’s candidacy for elective state office.*

In addition, staff recommends a modification to the proposed amendment to Section 85312 to cross-reference this section. (See the discussion under Section 7.)

4.	85306	Transfer and carryover section	Drafters
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This amendment inserts a comma and is without controversy.

Bill Sec.	Code Sec.	Subject	Source
5.	85309	Electronic reporting of large contributions	Drafters

The amendment to paragraph (a) makes a grammatical change, and the amendment to paragraph (b) adds “or oppose” to this disclosure section to require disclosure of contributions of \$1,000 or more made to support *or oppose* a ballot measure, and makes a grammatical change.

Paragraph (c) adds a requirement, not in Proposition 34, that elective state office (legislative, Board of Equalization, and statewide) candidates report contributions of \$5,000 or more within 48 hours of receipt. This requirement would apply only to those candidates who are required to file electronically (those who have collected or spent \$50,000 or more since January 1, 2000) and only in the period more than 90 days prior to an election. The provisions of paragraph (a) of this section already require reporting of contributions of \$1,000 or more within 24 hours of receipt when received within 90 days of an election. The bill provides that both the \$1,000, 24-hour reporting requirement and the 48-hour, \$5,000 reporting requirement apply to candidates for statewide elective office (and legislative candidates) upon enactment of SB 34. Finally, a subdivision (d) has been added to require the same 48 hour reporting of \$5,000 contributions made in support of, or opposition to, state ballot measures.

6.	85311	Affiliated entities provision	Drafters
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Section 85311 of Proposition 34 codified the rule in the Commission’s *Kahn* and *Lumsdon* Opinions regarding the instances in which two or more entities will be treated as affiliated for campaign reporting and contribution limit purposes. This amendment narrows the scope of the “affiliated entities” rule to contribution limits and amends the definition of “majority owned.”

The amendment makes no substantive change. The *Kahn* and *Lumsdon* Opinions would continue to provide the same rule for reporting purposes, and because deletion of the words “directly or indirectly” would not preclude the Commission from taking the same approach in regulations.

7.	85312	Member communications	Drafters/FPPC
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See discussion on pages 2 and 3.

8.	85317	Carryover authority	FPPC
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Corrects an erroneous reference to “state elective office” to “elective state office.” This is a technical correction raised by Commission staff.

Bill Sec.	Code Sec.	Subject	Source
9.	85318	Primary/general, special/runoff fundraising authority	FPPC

In addition to making technical corrections, this amendment extends the authority to collect contributions for the general election prior to the primary election to the special election context. The last sentence of the amendment provides the authority for separate accounts for primary and general elections and for special and runoff elections. These amendments resolve questions raised by Commission staff.

10.	85321	Fundraising for pre-2001 debt retirement	Drafters
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This is a new section of law being proposed by SB 34. It provides authority to raise contributions up to the amount of pre-2001 net debt and expressly provides that individual contributions are not subject to the Proposition 34 contribution limits. Recent amendments extend this authority to include the costs associated with collecting contributions for debt repayment, and require that moneys raised be used only to repay debt.

11.	85400 (b)	Voluntary expenditure ceilings	Drafters
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This amendment exempts campaign report preparation costs from the definition of “campaign expenditures” for purposes of the voluntary expenditure ceilings. The author’s intent here is that, since these costs do not benefit a candidate’s election efforts, they should not be counted toward his or her voluntary expenditure ceiling.

12.	85500 (b)	Independent expenditures	FPPC
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This amendment narrows the language that renders an independent expenditure a contribution to expenditures made in concert with or at the suggestion of the beneficiary of the expenditure.

13.	85501	Prohibition on IEs by controlled committees	FPPC
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This amendment narrows the prohibition on independent expenditures by candidate-controlled committees to independent expenditures that support or oppose other candidates.

14.	85600	Voluntary expenditures: designation in materials	FPPC/SoS
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This amendment corrects references in Proposition 34 to the state ballot pamphlet and requires local elections officials to ensure that sample ballot materials designate candidates who accept the voluntary expenditure limits of the proposition.

Bill Sec.	Code Sec.	Subject	Source
15.	85601	Existing PRA provisions relative to ballot pamphlet	Drafters

This amendment sets forth the procedures for allowing statewide elective office candidates who accept the voluntary expenditure limits to purchase the space to place a statement in the state ballot pamphlet. Additionally, this provision goes a step further than Proposition 34 by actually prohibiting the Secretary of State from printing a statement in the state ballot pamphlet for a candidate who has not accepted the voluntary expenditure ceilings. Staff believes that the amendment giving the Secretary of State the discretion to set forth procedures for the preparation of the state ballot pamphlet is inappropriate given the level of specificity already provided here and in the Elections Code, and that this change should be deleted.

16.	89510	Acceptable contributions	Drafters
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This amendment narrows the applicability of this section to elective state office candidates, clarifies that they may only accept contributions within the limits set forth in Chapter 5, and narrows the use of those contributions to expenses associated with election to office or with holding office. Staff has no comments on this amendment.

17.	Sec. 83	Delayed operative provision.	Drafters
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See discussion at page 3.

18.	Uncod.	Standard state mandates disclaimer	N/A
19.	Uncod.	Standard “further the purposes” language	N/A
20.	Uncod.	Urgency clause.	Drafters